IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SECOND DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

**THE HONOURABLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION NO.13467 of 2004

Between:

1 Kothapalli Kasiviswanath Raju, S/o. Late Suryanarayana Raju,
R/o. Palakoderu, Bheemavaram Mandal,
W.G. District.
2 Kothapalli Srivenkata Satya Bala Tripura Sushma, D/o. Kasiviswanth Raju,
R/o. Bhimavaram, West Godavari District.
3 Kothapalli Naga Chandrika, D/o. Kasiviswanth Raju,
R/o. Bhimavaram, West Godavari District.
4 Mantena Venkata Satya Padmavathi, W/o. Jagapathi Raju,
R/o. Bhimavaram, West Godavari District.
5 All Simhadri, S/o. Sambaiah,
R/o. Palakonderu, Bhimavaram Mandal, West Godavari District.
6 Alla Appalaraju, S/o. Sambaiah,
R/o. Palakonderu, Bhimavaram Mandal, West Godavari District.
7 Alla Ravi, S/o. Sambaiah,
R/o. Palakonderu, Bhimavaram Mandal, West Godavari District.
8 Melam Satyanarayana, S/o. Dharma Rao,
R/o. Vissakonderu, Bhimavaram Mandal, West Godavari District.
9 Gadiraju Appala Raju, S/o. Lakshmipathi Raju,
R/o. Bhimavaram Mandal,
10 Alla Ramakrishna, S/o. Sambaiah,
R/o. Palakoderu, Bhimavaram Mandal, West Godavari District.

**...PETITIONERS**

AND

1 The Principal Secretary to the Government of A.P., Public Health Department, Secretariat, Hyderabad.
2 The District Collector, West Godavari District, Eluru.
3 The Superintendent Engineer, Public Health Department, Rajamundray, West Godavari District.
4 The Dy. Executive Engineer, Public Health Department, Bheemavarm,

West Godavari District.

5 The Commissioner, Bheemavaram Municipality.

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction, declaring the action of the Respondent Authorities in altering the plan of the expansion of construction of SS Tank for Bhimavaram Water supply improvements under the scheme of HUDCO Phase-III by acquiring the petitioners land vide proceedings ROC No. 4131/99/E2, dated 28.06.2004, contrary to the original proposals signed vide ROC No. 4131 / 2003/ E1A, dated 17.09.2003 scheme of HUDCO, which was confirmed by the 51 Respondent Authority on 21.02.2004, as arbitrary, illegal, null and void and is against the principles of natural justice and norms of the public policy, and issue consequential directions to the Respondent Authorities to acquire the land to an extent of 125 acres which is originally sought to be acquired on the western side of the existing SS Tank as per the approved plan sanctioned by the Respondent Authorities.

**Counsel for the Petitioners: MR.VENKATESWARA RAO GUDAPATI**

**Counsel for the Respondents: MR.DANTU.SRINIVAS**

The Court made the following:

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**ORDER:**

The petitioners are residents of Palakoderu near Bhimavaram. They seek a Writ of Mandamus declaring the action of the respondents in altering the plan for expansion, for construction of S.S.Tank for Bhimavaram Water Supply improvements under the Scheme of HUDCO Phase-III as illegal and arbitrary. They also seek a consequential direction to the respondents to acquire the land admeasuring Acs.125, which was originally sought to be acquired on the western side of the existing S.S.Tank.

The Government of Andhra Pradesh has sanctioned Water Supply Scheme under HUDCO loan assistance Phase-III to Bhimavaram Municipality by G.O.Ms.No.98 dated 28.06.2003. The Engineer-in-Chief accorded necessary technical sanction by letter dated 17.09.2003. The cost for implementation of the Scheme is estimated at Rs.19,09,00,000/- (Rupees nineteen crore nine lakh only). In view of the same, the fifth respondent namely, the Commissioner, Bhimavaram Municipality addressed a letter to the Revenue Divisional Officer, Narsapur informing that the lands with various Survey numbers in Palakoderu Mandal would be acquired for construction of 850 ml capacity S.S.Tank for prospective requirements. The fifth respondent also submitted the land schedule showing acquisition of lands. Again the fifth respondent addressed a letter, dated 21.02.2002 to the second respondent, namely, the District Collector for taking necessary action for acquiring the lands, which are required for construction of 850 ml capacity S.S.Tank. The fifth respondent by letter, dated 28.06.2004 also informed the District Collector requesting to issue necessary orders for land acquisition for construction of tank for acquiring Acs.125 of land under the Scheme for Bhimavaram Water Supply Improvements. The petitioners apprehend that the communication, dated 28.06.2004 from the fifth respondent to the second respondent results in deviation of the original proposals by acquiring some other lands. The proposal made by the fifth respondent for acquiring the land, as per the letter and land schedules dated 28.06.2004, issued which was resulting in petitioners leasing their lands under the acquisition. It is their grievance that if the earlier proposal is implemented, the land to the west side of the existing S.S.Tank would have to be acquired, which is more feasible. But as per the new proposal, the lands on the northern side of the S.S.Tank would be acquired in which case all the petitioners' land would be acquired. The petitioners allege that if the lands are acquired as proposed earlier, the cost will be marginally lesser than the cost that has to be incurred for the lands on the northern side. They further allege that the changes in the proposal were brought in at the instance of rich people who want their lands deleted from the original Scheme. They, therefore, contend that the action of the respondents in going ahead with the proposals for acquisition of the petitioners' land is illegal and arbitrary.

Learned counsel for the petitioners strenuously contended that the authorities must be directed to implement the Scheme for improvement of water works in

Bhimavaram as per the original plan, which was sanctioned by the Government as well as the Engineer-in-Chief. It is their contention that their lands are sought to be acquired in a multiplied manner, which should be prevented and the respondents should be directed to adhere to the original plan for implementation of the Water Supply improvement Scheme. In spite of these strenuous submissions, this Court is not convinced that this is a matter, which can be adjudicated in the proceedings under Article 226 of the Constitution of India.

It is now settled that in matters of this nature, the decision would normally lie with the execution. The issue whether the land on the western side should be acquired or northern side should be acquired and which method of implementing the Scheme is more feasible or cheaper are all matters which cannot be adjudicated by this Court, especially when there is no material before this Court. Indeed these issues are not justiciable in a petition for judicial review. As on today, the petitioners' right is not affected, and as and when land acquisition proceedings are initiated, it is always open to the petitioners to raise all the submissions. It must be noticed that the power of eminent domain of the sovereign to acquire the lands for public purpose cannot be superceded or overshadowed by the interests of a person, who wants to save his own land. The Writ Petition is misconceived.

Accordingly, the Writ Petition is dismissed.

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**(V.V.S.RAO, J)**

2nd August 2004

RRB

Copies to:

1 The Principal Secretary to the Government of A.P., Public Health Department, Secretariat, Hyderabad.
2 The District Collector, West Godavari District, Eluru.
3 The Superintendent Engineer, Public Health Department, Rajamundray, West Godavari District.
4 The Dy. Executive Engineer, Public Health Department, Bheemavarm, West Godavari District.
5 The Commissioner, Bheemavaram Municipality.

6 Two CD copies.